

(c) *Waivers.* The appropriate Federal banking agency may waive any requirement of this part or a provision in any prescribed form. To obtain a waiver, you must file a written request with the appropriate Federal banking agency that:

(1) Specifies the requirement(s) or provision(s) you want the appropriate Federal banking agency to waive;

(2) Demonstrates that the waiver is equitable; is not detrimental to you, your account holders, or other savings associations; and is not contrary to the public interest; and

(3) Includes an opinion of counsel demonstrating that applicable law does not conflict with the requirement or provision.

§ 192.10 May I form a holding company as part of my conversion.

You may convert to the stock form of ownership as part of a transaction where you organize a holding company to acquire all of your shares upon their issuance. In such a transaction, your holding company will offer rights to purchase its shares instead of your shares. Regulations of the Board of Governors of the Federal Reserve System address holding company application requirements.

§ 192.15 May I form a charitable organization as part of my conversion?

When you convert to the stock form, you may form a charitable organization. Your contributions to the charitable organization are governed by the requirements of §§ 192.550 through 192.575.

§ 192.20 May I acquire another insured stock depository institution as part of my conversion?

When you convert to stock form, you may acquire for cash or stock another insured depository institution that is already in the stock form of ownership.

§ 192.25 What definitions apply to this part?

The following definitions apply to this part and the forms prescribed under this part:

Acting in concert has the same meaning as in § 174.2(c) of this chapter. The rebuttable presumptions of § 174.4(d) of

this chapter, other than §§ 174.4(d)(1) and (d)(2) of this chapter, apply to the share purchase limitations at §§ 192.355 through 192.395.

Affiliate of, or a person *affiliated with*, a specified person is a person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the specified person.

Associate of a person is:

(1) A corporation or organization (other than you or your majority-owned subsidiaries), if the person is a senior officer or partner, or beneficially owns, directly or indirectly, 10 percent or more of any class of equity securities of the corporation or organization.

(2) A trust or other estate, if the person has a substantial beneficial interest in the trust or estate or is a trustee or fiduciary of the trust or estate. For purposes of §§ 192.370, 192.380, 192.385, 192.390, 192.395 and 192.505, a person who has a substantial beneficial interest in your tax-qualified or non-tax-qualified employee stock benefit plan, or who is a trustee or a fiduciary of the plan, is not an associate of the plan. For the purposes of § 192.370, your tax-qualified employee stock benefit plan is not an associate of a person.

(3) Any person who is related by blood or marriage to such person and:

(i) Who lives in the same home as the person; or

(ii) Who is your director or senior officer, or a director or senior officer of your holding company or your subsidiary.

Association members or *members* are persons who, under applicable law, are eligible to vote at the meeting on conversion.

Control (including *controlling*, *controlled by*, and *under common control with*) means the direct or indirect power to direct or exercise a controlling influence over the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise as described in part 174 of this chapter.

Eligibility record date is the date for determining eligible account holders. The eligibility record date must be at least one year before the date your

board of directors adopts the plan of conversion.

Eligible account holders are any persons holding qualifying deposits on the eligibility record date.

IRS is the Internal Revenue Service.

Local community includes:

(1) Every county, parish, or similar governmental subdivision in which you have a home or branch office;

(2) Each county's, parish's, or subdivision's metropolitan statistical area;

(3) All zip code areas in your Community Reinvestment Act assessment area; and

(4) Any other area or category you set out in your plan of conversion, as approved by the appropriate Federal banking agency.

Offer, offer to sell, or offer for sale is an attempt or offer to dispose of, or a solicitation of an offer to buy, a security or interest in a security for value. Preliminary negotiations or agreements with an underwriter, or among underwriters who are or will be in privity of contract with you, are not offers, offers to sell, or offers for sale.

Person is an individual, a corporation, a partnership, an association, a joint-stock company, a limited liability company, a trust, an unincorporated organization, or a government or political subdivision of a government.

Proxy soliciting material includes a proxy statement, form of proxy, or other written or oral communication regarding the conversion.

Purchase or buy includes every contract to acquire a security or interest in a security for value.

Qualifying deposit is the total balance in an account holder's savings accounts at the close of business on the eligibility or supplemental eligibility record date. Your plan of conversion may provide that only savings accounts with total deposit balances of \$50 or more will qualify.

Sale or sell includes every contract to dispose of a security or interest in a security for value. An exchange of securities in a merger or acquisition approved by the appropriate Federal banking agency is not a sale.

Savings account is any withdrawable account as defined in §161.42 of this

chapter, including a demand account as defined in §161.16 of this chapter.

Solicitation and solicit is a request for a proxy, whether or not accompanied by or included in a form of proxy; a request to execute, not execute, or revoke a proxy; or the furnishing of a form of proxy or other communication reasonably calculated to cause your members to procure, withhold, or revoke a proxy. Solicitation or solicit does not include providing a form of proxy at the unsolicited request of a member, the acts required to mail communications for members, or ministerial acts performed on behalf of a person soliciting a proxy.

Subscription offering is the offering of shares through nontransferable subscription rights to:

(1) Eligible account holders under §192.355;

(2) Tax-qualified employee stock ownership plans under §192.380;

(3) Supplemental eligible account holders under §192.355; and

(4) Other voting members under §192.365.

Supplemental eligibility record date is the date for determining supplemental eligible account holders. The supplemental eligibility record date is the last day of the calendar quarter before the appropriate Federal banking agency approves your conversion and will only occur if such agency has not approved your conversion within 15 months after the eligibility record date.

Supplemental eligible account holders are any persons, except your officers, directors, and their associates, holding qualifying deposits on the supplemental eligibility record date.

Tax-qualified employee stock benefit plan is any defined benefit plan or defined contribution plan, such as an employee stock ownership plan, stock bonus plan, profit-sharing plan, or other plan, and a related trust, that is qualified under section 401 of the Internal Revenue Code (26 U.S.C. 401).

Underwriter is any person who purchases any securities from you with a view to distributing the securities, offers or sells securities for you in connection with the securities' distribution, or participates or has a direct or indirect participation in the direct or

indirect underwriting of any such undertaking. Underwriter does not include a person whose interest is limited to a usual and customary distributor's or seller's commission from an underwriter or dealer.

Subpart A—Standard Conversions

PRIOR TO CONVERSION

§ 192.100 What must I do before a conversion?

(a) Your board, or a subcommittee of your board, must meet with the appropriate Federal banking agency before you pass your plan of conversion. The meeting may occur at the appropriate Federal banking agency or your offices at your option. At that meeting you must provide the appropriate Federal banking agency with a written strategic plan that outlines the objectives of the proposed conversion and the intended use of the conversion proceeds.

(b) You should also consult with the appropriate Federal banking agency before you file your application for conversion. The appropriate Federal banking agency will discuss the information that you must include in the application for conversion, general issues that you may confront in the conversion process, and any other pertinent issues.

§ 192.105 What information must I include in my business plan?

(a) Prior to filing an application for conversion, you must adopt a business plan reflecting your intended plans for deployment of the proposed conversion proceeds. Your business plan is required, under § 192.150, to be included in your conversion application. At a minimum, your business plan must address:

(1) Your projected operations and activities for three years following the conversion. You must describe how you will deploy the conversion proceeds at the converted savings association (and holding company, if applicable), what opportunities are available to reasonably achieve your planned deployment of conversion proceeds in your proposed market areas, and how your deployment will provide a reasonable return on investment commensurate

with investment risk, investor expectations, and industry norms, by the final year of the business plan. You must include three years of projected financial statements. The business plan must provide that the converted savings association must retain at least 50 percent of the net conversion proceeds. The appropriate Federal banking agency may require that a larger percentage of proceeds remain in the institution.

(2) Your plan for deploying conversion proceeds to meet credit and lending needs in your proposed market areas. The appropriate Federal banking agencies strongly discourage business plans that provide for a substantial investment in mortgage securities or other securities, except as an interim measure to facilitate orderly, prudent deployment of proceeds during the three years following the conversion, or as part of a properly managed leverage strategy.

(3) The risks associated with your plan for deployment of conversion proceeds, and the effect of this plan on management resources, staffing, and facilities.

(4) The expertise of your management and board of directors, or that you have planned for adequate staffing and controls to prudently manage the growth, expansion, new investment, and other operations and activities proposed in your business plan.

(b) You may not project returns of capital or special dividends in any part of the business plan. A newly converted company may not plan on stock repurchases in the first year of the business plan.

§ 192.110 Who must review my business plan?

(a) Your chief executive officer and members of the board of directors must review, and at least two-thirds of your board of directors must approve, the business plan.

(b) Your chief executive officer and at least two-thirds of the board of directors must certify that the business plan accurately reflects the intended plans for deployment of conversion proceeds, and that any new initiatives reflected in the business plan are reasonably achievable. You must submit